IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.2251 OF 1985

Central Bank of India .. Plaintiffs

Vs.

Sumitomo Marine and Fire Insurance Co.Ltd.& Anr. .. Defendants

Mr.K.H.Modi with Ms.S.Chodankar i/b M/s.Little & Co. for the plaintiffs

Mr.R.T.Yadav i/b R.R.Mishra for defendant no.2

CORAM : S.U.KAMDAR, J

DATED : 11TH JULY 2005

P.C.:

1. In the present case, the suit has been filed by the plaintiffs for a sum of Rs.7,44,577.74. Suit as against defendant no.2 has been dismissed for non-prosecution because plaintiffs could not serve the writ of summons to defendant no.2. Writ of Summons is served on the defendant no.1. In the aforesaid circumstances, the following preliminary issue was framed.

"Whether the suit as against the defendant no.1 alone is maintainable after the suit is dismissed for want of prosecution as against defendant no.2?

2. Matter has been placed today for hearing on the aforesaid issue. Some the facts in the present case are briefly enumerated as under:

3. The plaintiffs established a Letter of Credit in favour of a Japanese firm viz. Chuo & Company Limited, Japan for a sum of Japanese Yen 14,106,000 equivalent to Rs.6.0 Lacs. The said L/C was established for the purpose of import of the goods by defendant no.2 from the foreign supplier. In respect of the aforesaid facility, the defendant pledged the said goods in favour of the plaintiffs. It is the case of the plaintiffs that in respect of the said goods defendants obtained an insurance policy from defendant no.1 for any loss suffered by them in transit of the said goods and the said insurance policy was duly assigned by defendant no.2 to the plaintiffs herein. The said Insurance Policy is dt.16.1.82.

4. On the basis of the aforesaid assignment of

the said policy in their favour, plaintiffs has instituted the present suit against the defendant no.1 and 2. However, as set out hereinabove, suit as against defendant no.2 is dismissed for non-prosecution.

5. In respect of the aforesaid preliminary issue, matter is heard today. The learned counsel for the plaintiffs has fairly conceded that the policy at Ex.A which is typed copy does not show any endorsement of the assignment of the said policy in their favour. He has also stated that the original policy is lost and not traceable and he is unable to show to the court any assignment of the policy in favour of the plaintiffs. In view of the aforesaid, issue must be answered against the plaintiffs in favour of defendant no.1. I, therefore, hold that in absence of any evidence of assignment of the policy in their favour the suit as framed is not maintainable. Suit is accordingly dismissed. However, there shall be no order as to costs.